IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 19TH NOVEMBER 2007 / 28TH KARTHIKA 1929

Bail Appl..No. 6980 of 2007()

CRIME NO.886/2007 OF KALAMASSERY POLICE STATION

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: PETITIONERS/ACCUSED NO.1 AND 2

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1. PRAKASH, S/O.APPU, AGED 32,
PALLIPARAMBIL HOUSE, KARIPPAI ROAD,
KALAMASSERY, ERNAKULAM.

2. APPU, S/O.VAREED, AGED 62,
PALLIPARAMBIL HOUSE, KARIPPAI ROAD,
KALAMASSERY, ERNAKULAM.

BY ADV. SRI.R.MURALEEKRISHNAN

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 19/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.6980 of 2007

Dated this the 19th day of November 2007

O R D E R

Application for anticipatory bail. The petitioners are accused 1 and 2. Altogether there are four accused persons. Third accused has been arrested and granted bail. Fourth accused is still absconding. The petitioner's application for anticipatory bail was dismissed by the learned Sessions Judge.

2. The alleged incident took place on 7/10/2007. The crux of the allegations against the petitioners is that they had gone to a bar in the morning and there was some quarrel and dispute. Later in the evening, the petitioners, along with the co-accused, allegedly trespassed into the bar and indulged in wanton acts of violence and mischief. Crime was registered. The petitioners are named in the F.I.R. Scene mahazer shows that damage was caused to the bar. Investigation is in progress. The petitioners apprehend imminent arrest.

3. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. The petitioners are not the aggressors but only the victims of aggression. They had gone to the Bar. They were assaulted and injuries were caused to them. False and vexatious allegations are being raised against the petitioners, it is submitted. The learned counsel for the petitioners submits that the first petitioner has suffered head injury as a result of the said attack.

4. Notice was given to the learned Public Prosecutor. The learned Public Prosecutor opposes the application. No complaint has so far been raised of any injury suffered by any of the accused. In any view of the matter, this is not a fit case where the extraordinary equitable discretion under Section 438 Cr.P.C can or ought to be invoked. The petitioners may not be granted anticipatory bail, submits the learned Public Prosecutor.

5. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. I am satisfied that there are no features in this case which would justify invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This, I agree with the learned Public Prosecutor, is a fit case where the petitioner must appear before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail in the normal and ordinary course.

6. In the result, this petition is dismissed. Needless to say, if the petitioner surrenders before the investigating officer or the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr // True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007